

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
JANUARY 17, 2018

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, William McFarland, Michael Graham, and Michael Timmons

Commission Members Absent: Gary Reed

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, and Miles Greenleaf

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Review and Approval of Minutes**  
None.

**Review and Approval of Decision and Orders**  
None

**3. Reopening of the 2018 Race Date Hearing for requested minor adjustments.** Union Fair has requested to change its August 25 (Saturday) race date to August 24 (Friday) and to change the post time from 1:00 p.m. to 2:00 p.m. on August 19. Scarborough Downs has requested April 19 and 26, and November 15 and 22 as potential make-up days. Mr. Jennings stated that he received two request. Union Fair is requesting to change its August 25<sup>th</sup> date and Scarborough Downs is requesting potential make up dates. AAG, Guay stated that the rules need to be followed in reopening the 2018 Race Date Hearing. He asked Mr. Jennings if he noticed the participants. Mr. Jennings stated no. AAG, Guay asked Mr. Cobbett if Scarborough had an issue with Union's request. Mr. Cobbett stated no. AAG, Guay stated that there needs to be a motion to reopen the hearing. Commissioner Graham made a motion to reopen the race date hearings to make minor adjustments for Union and Scarborough. Commissioner McFarland seconded. Vote 4-0. Mr. Jennings stated that Rick Parent from Union Fair was present. Mr. Parent asked to change their race date to Friday, August 24<sup>th</sup> and not Saturday, August 25<sup>th</sup>. AAG, Guay asked Scarborough if they object to this request. Steve Cobbett stated no they do not. Commissioner Varney asked for a motion. Commissioner McFarland made a motion to approve the change of Union Fair from Saturday, August 25<sup>th</sup> to Friday, August 24<sup>th</sup> with a post time of 2:00 p.m. Commissioner Timmons seconded. Vote 4-0. Steve Cobbett representing Scarborough Downs stated that they are requesting make up dates for April 19<sup>th</sup> and April 26 in case there are any dates that would be canceled in March. They are also requesting make up dates for November 15<sup>th</sup> and November 22<sup>nd</sup> to meet their day requirement for any reason whether it was horse supply or track conditions. Ms. Damren stated that November 22<sup>nd</sup> is Thanksgiving. Mr. Cobbett stated that he would change the date to November 29<sup>th</sup>. AAG, Guay asked Mr. Cobbett if Bangor is racing any of those dates. Mr. Cobbett stated no they are not racing. AAG, Guay stated that there was no notice given. Commissioner Graham made a motion to grant the make up dates April 19<sup>th</sup>, April 26, November 15<sup>th</sup> and November 29<sup>th</sup> to Scarborough. Commissioner Timmons seconded. Vote 4-0. AAG, Guay closed the race date assignment hearing.

**4. Adjudicatory Hearings:**

- a. **RE: David Del Pozzo, Complaint Numbers 2017 MSHRC 4 & 5.** Mr. Del Pozzo did not return his portion of the purse of \$1,500.00 from May 24, 2017 at Bangor Raceway or his purse of \$750.00 from May 27, 2017 at Scarborough Downs. It was instructed in the Decision and Order that the purses be returned by October 23, 2017. Owes \$1,125. Mr. Del Pozzo was not present. AAG, Guay opened the proceeding. He qualified the Commissioners. He also qualified Miles Greenleaf. He asked questions of Mr. Greenleaf. Mr. Greenleaf stated that he spoke to Mr. Del Pozzo on the phone. In their conversation, Mr. Del Pozzo stated that he would not be attending the hearing and he did not request a continuance. Mr. Greenleaf stated that the purse has not been paid. Mr. Jennings is requesting a suspension of his license. AAG, Guay stated that the department is able to suspend Mr. Del Pozzo's license because the license doesn't just go away. He does have a license, he just has to renew it. Is the department also asking to administratively reinstate Mr. Del Pozzo's license once the payment is received? Mr. Jennings stated yes. AAG, Guay stated to the Commissioners that the motion would be for an indefinite suspension of Mr. Del Pozzo's license with the ability to administratively reinstate the license once payment is received. Commissioner Graham stated that he does not agree with the motion as stated by AAG, Guay. This payment was due by October 23<sup>rd</sup>. Mr. Jennings stated that he has had several conversations with Mr. Del Pozzo. It was a matter of principal is what Mr. Del Pozzo said. Commissioner Graham disagreed. Commissioner Varney asked where does Eric Davis come into this. Is this the total that they owe? Mr. Greenleaf stated that they are partners in the horse. Commissioner Varney asked why do they get to decide who pays what. Commissioner Timmons stated he doesn't think in the motion that was recommended. Commissioner Graham made a motion to suspend Mr. Del Pozzo's license. Commissioner McFarland seconded. AAG, Guay stated that you can only suspend his license. The basis is for nonpayment. Commission Graham stated that the payment should be for the total amount owed. Commissioner McFarland stated that they are trying to decide the decision made by the executive director based on the information he received from the two owners that they'd split it. What they know is that the purse was \$2,250.00, that is the amount due back to the commission to be distributed to the rightful owners. Commissioner Varney stated that you made the deal with these to people. Have you told these people that this was acceptable? Mr. Jennings stated he did not say anything to Mr. Del Pozzo. They negotiated and Mr. Greenleaf has been in contact with Mr. Davis. That is an option that they have given to them. Commissioner Varney doesn't have a problem with that because you've made a deal with them. Going forward if you have a purse that needs to be returned, both parties are liable to return the purse before any of the parties get relicensed. Commissioner Timmons asked AAG, Guay if half of the amount is paid back and not the remaining. Will one of the parties get a license. AAG, Guay stated that the department is finding themselves in a position to figure out who pays back the purse. In the future, what does that mean, return of the purse. He would suggest, whoever the purse check is given to. Someone got that check and they need to return that amount of money. Commissioner Graham stated that it's the owners that need to pay that purse back. Commissioner Varney stated that if they are on the ownership certificate they are liable. Going forward if the purse return is to be returned, all owners are liable for the whole amount until it's paid back. AAG, Guay stated that the notice of hearing needs to go out to all owners. Mr. Jennings asked the Commission if they want the department to get out of the payment plan. Commissioner Varney stated no payment plan. Commissioner McFarland stated he does agree but after the due date. Mr. Jennings asked if a payment plan for fines is ok. Commissioner Varney stated fines are a separate item. AAG, Guay suggested an alternative course to reinstate Mr. Del Pozzo's license is to have him come back for failure to obey a commission order, and at that point suspend him again or fine him or do something. If the thing that's preventing him from

having his license is payment of something and he pays it; it's not clear to him that you can continue to suspend his license. Commissioner Varney made a motion to suspend the license of Mr. Del Pozzo. Commissioner McFarland seconded. Vote 4-0.

- b. **RE: Heidi Gibbs, Complaint Number 2017 MSHRC 29.** Ms. Gibbs is alleged to have violated MSHRC Rules Chapter 7 and 11. Ms. Gibbs is the trainer of record for the horse "Lets Get It All". A blood sample obtained from Lets Get It All following the First Non-Betting Race at the Skowhegan Fair on August 14, 2017 disclosed an elevated level of Betamethasone. AAG, Guay stated that Ms. Gibbs has been granted a continuance.
- c. **RE: David Nelson, Complaint Number 2017 MSHRC 36.** Mr. Nelson is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Nelson is the trainer of record for the horse "Bettor Angel". A blood sample obtained from Bettor Angel following the Tenth Race at the Windsor Fair on September 1, 2017 disclosed an elevated level of Dexamethasone. David Nelson was not present. AAG, Guay opened the hearing of Mr. Nelson. He qualified the Commissioners. AAG, Guay stated there was a motion for a continuance from Robert Sumner. He also stated that the department opposed the motion for a continuance. Mr. Jennings stated that Mr. Sumner wanted to participate by phone. AAG, Guay stated that Mr. Jennings showed him an email from Mr. Nelson that shows he was aware of the hearing. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Trainer's License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Certificate of Analysis; Exhibit 8, ARCI Guidelines; and Exhibit 9, Email to Mr. Jennings from Mr. Nelson. At this point, Mr. Greenleaf attempted to reach Mr. Sumner by phone. AAG, Guay admitted the exhibits by default. Mr. Jennings stated that exhibit 7 from LGC laboratory certificate of analysis shows a positive for Dexamethasone at 14 pica grams per milliliter that constitutes evidence of a violation of Chapter 11. AAG, Guay closed the hearing for deliberations. Commissioner Varney asked for any discussion or a motion. Commissioner McFarland made a motion that the defendant has committed a violation. Commissioner Timmons seconded. Mr. Jennings made a recommendation for a first violation penalty Class C as a \$500 fine and return of purse. Commissioner Graham made a motion to fine Mr. Nelson \$500 and return of purse within 30 days. Commissioner McFarland seconded. Vote 4-0. AAG, Guay stated that Mr. Sumner referenced a lawyer in the email but AAG, Guay reached out to the lawyer stated in the email and the lawyer stated that he was not representing Mr. Sumner.
- d. **RE: Valerie Grondin, Complaint Number 2017 MSHRC 45.** Ms. Grondin is alleged to have violated MSHRC Rules Chapter 7 and 11. Ms. Grondin is the trainer of record for the horse "Pembroke Perfect". A blood sample obtained from Pembroke Perfect following the Ninth Race at Scarborough Downs on October 14, 2017 disclosed an elevated level of Betamethasone. AAG, Guay stated that Ms. Grondin has been granted a continuance.
- e. **RE: Dan Deslandes, Complaint Number 2017 MSHRC 48.** Mr. Deslandes is appealing the judges' decision regarding the alleged violation of Chapter 7, Section 54, 1-A and M during the Seventh Race at Bangor Raceway on November 3, 2017. Dan Deslandes was not present due to an accident. AAG, Guay suggested to the Commissioners to review the video tape and decide if you need Mr. Deslandes testimony. If we do that we don't have to take the testimony from the other drivers. The Commissioners agreed with AAG, Guay's suggestion and moved forward. AAG, Guay qualified the Commissioners. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2,

Owner/Driver/Trainer's License Application; Exhibit 3, Race Program; Exhibit 4, USTA Notice of Fines; Exhibit 5, MSHRC Notice of Judges Hearing; Exhibit 6, Witness List; Exhibit 7, MSHRC Appeal Form; Exhibit 8, Excerpt from Chapter 7, Section 54. 1A & M; and Exhibit 9, Video Tape. AAG, Guay admitted the exhibits. He stated that Mr. Deslandes does have the opportunity to appeal. The video was watched at this point. AAG, Guay stated that the Commissioners have reviewed the tape and are ready to make a decision. Commissioner Varney asked for a motion. Commissioner Graham made a motion to deny Mr. Deslandes his appeal. Commissioner McFarland seconded. Vote 4-0.

5. **Review of the Rulemaking Comments and Hearing Record.** On November 22, 2017, a Notice of Agency Rulemaking Proposal was published in Maine's five daily newspapers marking the beginning of the official comment period for proposed amendments to Chapters 1, 3, 7, 11, 13, 15 and 17 of the Commission's rules. The Commission held a public hearing on the proposed amendments December 14, 2017. The deadline for written comments was the close of business on December 29, 2017. The Commission will now review the comments and determine which amendments to adopt. Mr. Jennings stated there were three comments received. One was from Diann Perkins, Erika Saucier, and the departments comments. The Commissioners stated to move forward with the change in Chapter 13, Section 47, page 17; Chapter 15, Section 6, page 4; They also stated to move forward with Chapter 1, Section 10.4, page 13, but take out "relating to participation in harness racing" and add after overdue to the Commission "or a licensed Association". Chapter 3, Section 1, move forward with the change. Mr. Jennings will bring these 4 chapters to the next meeting for adoption. Chapter 7, 11, and 17 will be reviewed at the next meeting.
6. **Department Request for Commission Authorization to Expend Funds on Marketing for the 2018 Race Season.** During the 2017 race season, the Department requested authorization from the Commission to expend funds to support additional marketing of the sport. The Commission subsequently authorized expenditures up to \$10,000 for calendar year 2017. The Department has been working with industry representatives, a volunteer marketing consultant, and a contract marketing consultant to develop an integrated marketing plan for 2018 and beyond. The Department is seeking Commission authorization to expend funds to implement at least the basic elements of the integrated marketing plan for 2018. Mr. Jennings handed out a summary of what the department did in 2017 from the money that was authorized for the department to spend on marketing harness racing. He is asking for \$18,200 in additional funds for marketing for 2018. Commissioner Varney asked for discussion. Commissioner Graham made a motion to authorize the department to spend up to \$18,000 for marketing. Commissioner McFarland seconded. He also wanted to know where the online wagering rules are. AAG, Guay stated that he personally reviewed the rules and they have been submitted to the Secretary of State's office, and the rules are currently at the Legislative Council for review. Commissioner Varney called for a vote. Vote 4-0.
7. **Department's Opposition to Motions for Continuances.** The Department sometimes receives requests to continue hearings to a future date. Oftentimes, those requests arise due to the licensee's absence from the State relating to racing in other jurisdictions or wintering in warmer locales. Currently, the Department has no rule, policy or written guidance on whether to oppose continuance requests. Consequently, the Department is seeking the Commission's input on appropriate grounds for opposing continuance request. Mr. Jennings asked for guidance regarding continuances. AAG, Guay stated it is a matter of due process. The presiding officer is the one that grants continuances. He stated that if both parties agree with a continuance he will not oppose it. What he thinks Mr. Jennings is asking, is when should he oppose one. Mr. Jennings stated that is exactly right. Commissioner Graham stated that he is opposed on a continuance. There should be one shot only.

Commissioner McFarland stated that 30 days seems fair. AAG, Guay stated that there could be cases that are more than 30 days. Commissioner Graham doesn't agree they should have a long time when there is a return of purse. Commissioner McFarland stated that it does make a difference if they are trying to make a living not just on vacation. Commissioner Timmons stated that he heard that the AAG, Guay grants the continuance so you do not have to communicate with this Commission. Mr. Jennings stated that he needs guidance; when does he get to oppose. Commissioner McFarland stated that they would leave it up to his judgement with respect to opposing a continuance. Mr. Jennings stated that it sounds like if people are out of state you as a Commission support one month continuance, and then he can oppose. Commissioner Graham stated yes. Mr. Jennings stated that he thinks it's sufficient guidance.

## **8. Other business:**

### **1. Consideration of ARCI Annual Membership Renewal.**

Mr. Jennings stated that he is very careful about spending money because eventually it comes out of the cascade. Commissioner Varney stated that he doesn't see any reason to spend \$3,200. The Commission decided to not go forward with the membership.

### **2. Discussion of Policies Relating to Licensing.**

Mr. Jennings stated that what the department faces as soon as racing season starts is people show up in the office at 10 minutes before 5:00 on a Friday afternoon for their license. He doesn't think that is going to happen.

### **3. Discussion of the Commission's Consent Agreement Policy**

Mr. Jennings stated that in most agencies they promote the use of consent agreements because it saves a huge amount of time and money. If you get a consent agreement through the commission's office, then you know you are going to get exactly what the sanction is because the commission is only authorized to do a consent agreement if they get the minimum penalty in Chapter 17. Commissioner Varney stated to put items 2 and 3 on the agenda for February.

## **9. Public Comment**

Wendy Ireland stated that the board of directors of the Maine Breeders and Owner's Association had a board meeting last week and discussed the issue of continuances. The board feels moving forward if what you discussed here today is going to actually solve the problem. The MSBOA is trying to look at the integrity of the sport. They need to see these cases dealt with in a timely fashion.

Ms. Ireland stated that they do have a question from both boards (MSBOA & MHHA) in regards to Scarborough Downs. Maybe the Commission can answer this. It has to do with the sale of Davric. In recent comments made at a meeting in the town of Scarborough, the current owners say they own the racetrack and that they've leased the racetrack back to Golden Ark. As an industry, they would like to see a little more transparency in finding out if they need to go through the relicensing process and the race date hearings. AAG, Guay stated that if there is a change in the beneficial ownership of the licensed applicant of more than 50% the license is void by operation of law. That doesn't mean the Commission takes the license away. As a matter of statute, if that has occurred the license is no longer in affect. However, in order for that to occur, the person who applied for the license (Davric Corporation), they would have to have had a change in the Davric Corporation. The fact that Davric would no longer own the track would not be relevant to the beneficial ownership of the licensee. If there's income coming into the company, the person who has the right to the income has changed than that section of statute would apply. If there is something in the lease that would affect their ability to hold harness racing, then the department would come forward with that information. The fact that the track is being leased verses owned in of itself is not something the Commission would

have to act on. If, however, because of the change in ownership of the land there's something that harms the ability of Davric to run the track than that could be brought forward to the Commission. In terms of the transaction, one of two things need to happen in order for the Commission to weigh in on, there would have to be a change in ownership or if the lease says (hypothetical) you can't have harness racing on Wednesday than the Commission would hear on that. Debbie Patterson representing the Maine Harness Horsemen's Association stated that there were possibly 1,000 people licensed last year and this is their livelihood. What are Scarborough's plans? Commissioner Varney stated that the sale just closed two weeks ago. You need to give them a little bit of time and maybe they will come forward and tell you exactly what they are going to do. AAG, Guay stated that if there is something going on, the department has the ability to ask for stuff. The Commissioners don't do due diligence. Mr. Jennings stated that these two young ladies are expressing in his view is the uncertainty around the future of the track that has the most number of race days. Mr. Jennings thinks that he should approach Scarborough and open up a dialogue. Steve Cobbett addressed the Commission. He stated that Scarborough Downs has not been bought. The property has been sold and they are still doing business as Davric Maine. If you have questions, our attorney Ed MacColl would be more than happy to furnish that information. Commissioner Timmons stated that the Maine Fair Association's Conference is in Portland at the Holiday Inn by the Bay on January 25th to January 27th. They are having an auction and the proceeds from the auction are going to benefit the entire state of Maine when they hold a zone conference in 2019. This is an important kick off for that conference.

**10. Schedule of Future Meetings:**

February 8, 2018

March 8, 2018

April 12, 2018

**11. Adjourn**

12:00 p.m.